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13
14 **UNITED STATES DISTRICT COURT**
15
NORTHERN DISTRICT OF CALIFORNIA

16 CASEY ROBERTS, Individually and On
17 Behalf of All Others Similarly Situated,

18 Plaintiff,

19 v.

20 ZUORA, INC., TIEN TZUO, and TYLER
21 SLOAT,

22 Defendants.

23 Case No. 3:19-cv-03422-SI

24
NOTICE OF MOTION AND MOTION OF
DEREK SELANDERS FOR
APPOINTMENT AS LEAD PLAINTIFF
AND APPROVAL OF LEAD COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

25 Date: October 4, 2019

26 Time: 10:00 a.m.

27 Crtrm.: 1

28 The Hon. Susan Illston

NOTICE OF MOTION AND MOTION

**TO THE CLERK OF THE COURT, ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on October 4, 2019 at 10:00 a.m., or as soon thereafter as the matter can be heard in the courtroom of the Honorable Susan Illston, in Courtroom 1, 450 Golden Gate Avenue, San Francisco, CA 94102, Derek Selanders (“Movant”) will move this Court for entry of an Order: (i) appointing Movant as Lead Plaintiff; (ii) approving Movant’s selection of Glancy Prongay & Murray LLP as Lead Counsel; and (iii) granting such other and further relief as the Court may deem just and proper.

10 This motion is brought pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of
11 1934 (“Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities
12 Litigation Reform Act of 1995 (the “PSLRA”), for an Order (attached hereto): (i) appointing
13 Movant as Lead Plaintiff on behalf of all persons who purchased or otherwise acquired the
14 securities of Zuora, Inc. between April 12, 2018 and May 30, 2019, inclusive (“Class Period”); (ii)
15 approving Movant’s selection of counsel as Lead Counsel; and (iii) granting such other and further
16 relief as the Court may deem just and proper.

17 In support of this Motion, Movant submits a Memorandum of Points and Authorities in
18 support thereof and the Declaration of Lesley F. Portnoy and the exhibits attached thereto, and all
19 of the prior pleadings and other files in this matter, and such other written or oral arguments as
20 may be permitted by the Court.

21 This motion is made on the grounds that Movant is the most adequate plaintiff, as defined
22 by the PSLRA, based on his significant losses suffered as a result of the defendants' wrongful
23 conduct as alleged in the above-referenced actions. Further, Movant satisfies the requirements of
24 Rule 23(a) of the Federal Rules of Civil Procedure, as his claims are typical of other Class
25 members' claims and he will fairly and adequately represent the interests of the Class.

MEMORANDUM OF POINTS AND AUTHORITIES

27 Derek Selanders (“Movant”) respectfully submits this memorandum of law in support of
28 their motion pursuant to the Federal Rules of Civil Procedure and the Private Securities Litigation

1 Reform Act of 1995, 15 U.S.C. § 78u-4, *et seq.* (the “PSLRA”) for an Order: (1) appointing
 2 Movant as Lead Plaintiff under 15 U.S.C. § 78u-4(a)(3)(B); (2) approving Movant’s selection of
 3 Glancy Prongay & Murray LLP as Lead Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v); and
 4 (3) granting such other relief as the Court may deem to be just and proper (the “Motion”).

5 **I. PRELIMINARY STATEMENT**

6 This is a class action on behalf of persons and entities that acquired Zuora Inc. (“Zuora” or
 7 the “Company”) securities between April 12, 2018 and May 30, 2019, inclusive (the “Class
 8 Period”).

9 Pursuant to the PSLRA, the plaintiff or movant with the largest financial interest in the
 10 relief sought by the Class that otherwise satisfies the requirements of Rule 23 of the Federal Rules
 11 of Civil Procedure is presumed to be the “most adequate plaintiff” – the plaintiff most capable of
 12 adequately representing the interests of Class members. The PSLRA provides that the Court shall
 13 appoint the most adequate plaintiff as lead plaintiff. This motion is made on the grounds that
 14 Movant is the “most adequate plaintiff” as defined by the PSLRA. Accordingly, Movant has “the
 15 largest financial interest in the relief sought by the class” as a result of defendants’ wrongful
 16 conduct as alleged in this action.

17 In addition, for purposes of this motion, Movant satisfies the relevant requirements of Rule
 18 23 of the Federal Rules of Civil Procedure, as his claims are typical of other Class members’
 19 claims, and he is committed to fairly and adequately representing the interests of the Class. Thus,
 20 pursuant to the PSLRA’s lead plaintiff provision, Movant respectfully submits that he is
 21 presumptively the most adequate plaintiff and should be appointed as lead plaintiff for the Class.
 22 Additionally, Movant’s selection of Glancy Prongay & Murray LLP as Lead Counsel for the Class
 23 should be approved because the firm has substantial expertise in securities class action litigation
 24 and the experience and resources to efficiently prosecute this action.

25 **II. FACTUAL BACKGROUND**

26 Zuora is a cloud-based subscription management platform. Its business consists of three
 27 components: Zuora Central Platform, a subscription management hub; order-to-revenue products;
 28 and an application marketplace. Its flagship products are Zuora RevPro (“RevPro”), a revenue

1 recognition automation solution that enables customers to group transactions into revenue
 2 contracts and performance obligations, and Zuora Billing, which is designed for subscription
 3 billing. Zuora acquired RevPro in May 2017 when it acquired Leeyo Software Inc.

4 On May 30, 2019, the Company lowered its fiscal 2020 revenue guidance to a range of
 5 \$268 million to \$278 million, from prior guidance of \$289 million to \$293.5 million, citing
 6 problems integrating RevPro, as well as sales execution problems.

7 On this news, the Company's share price fell \$5.91 per share, nearly 30%, to close at
 8 \$13.99 per share on May 31, 2019, on unusually heavy trading volume.

9 The complaint alleges that throughout the Class Period, Defendants made materially false
 10 and/or misleading statements, as well as failed to disclose material adverse facts about the
 11 Company's business, operations, and prospects. Specifically, Defendants failed to disclose to
 12 investors: (1) that the Company would focus on implementing RevPro for new customers ahead of
 13 the deadline to comply with accounting standard ASC 606; (2) that, as a result, the Company
 14 lacked adequate resources to integrate RevPro with the core business; (3) that the Company would
 15 focus on RevPro integration a year after the acquisition closed; (4) that delays in integrating
 16 RevPro would materially impact the business; (5) that the market for RevPro was limited to
 17 customers seeking to implement new accounting standards such as ASC 606; (6) that, after the
 18 deadline for ASC 606 compliance passed, demand for RevPro was reasonably likely to decline;
 19 and (7) that, as a result of the foregoing, Defendants' positive statements about the Company's
 20 business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

21 **III. ARGUMENT**

22 **A. Movant Should Be Appointed Lead Plaintiff**

23 The PSLRA provides the procedure for selecting a lead plaintiff in class actions brought
 24 under the federal securities laws. The PSLRA provides a "rebuttable presumption" that the "most
 25 adequate plaintiff" – *i.e.*, the plaintiff most capable of adequately representing the interests of the
 26 Class – is the "person or group of persons" that:

27 (aa) has either filed the complaint or made a motion in response to a notice...;

28

1 (bb) in the determination of the Court, has the largest financial interest in the relief sought
 2 by the class; and

3 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 4 Procedure.

5 15 U.S.C. § 78u-4(a)(3)(b)(iii)(I).

6 The presumption in favor of appointing a plaintiff or group of plaintiffs as lead plaintiff
 7 may be rebutted only upon proof “by a purported member of the plaintiff class” that the
 8 presumptively most adequate plaintiff:

9 (aa) will not fairly and adequately protect the interest of the class; or

10 (bb) is subject to unique defenses that render such plaintiff incapable of adequately
 11 representing the class.

12 15 U.S.C. § 78u-4(a)(3)(b)(iii)(II).

13 As set forth below, Movant has complied with all of the PSLRA’s requirements and
 14 satisfies all of the PSLRA criteria to be appointed lead plaintiff. Movant, to the best of his
 15 knowledge, has the largest financial interest in this litigation, satisfies the relevant requirements of
 16 Federal Rule of Civil Procedure 23 and is not aware of any unique defenses defendants could raise
 17 against him that would render him inadequate to represent the Class. Accordingly, Movant
 18 respectfully submits that he should be appointed lead plaintiff. *See In re Cavanaugh*, 306 F.3d
 19 726, 730 (9th Cir. 2002) (“If the plaintiff with the largest financial stake in the controversy
 20 provides information that satisfies these requirements, he becomes the presumptively most
 21 adequate plaintiff”).

22 1. Movant’s Motion is Timely

23 Movant has made a timely motion in response to a PSLRA early notice. On June 14, 2019,
 24 pursuant to Section 21D(a)(3)(A)(I) of the PSLRA, notice was published in connection with this
 25 action. *See* Declaration of Lesley F. Portnoy (“Portnoy Dec.”), Exh. A. Therefore, Movant had
 26 sixty days or until August 13, 2019, to file a motion to be appointed as Lead Plaintiff. As a
 27 purchaser of Zuora securities during the relevant Class Period, Movant is a member of the
 28 proposed class and has timely filed a motion for appointment as lead plaintiff within sixty days of
 the Notice, in compliance with the PSLRA. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(aa).

1 Additionally, as set forth in his PSLRA certifications, Movant attests that he has reviewed
 2 the complaint, adopts the allegations therein, and is willing to serve as a representative of the
 3 class. Portnoy Dec., Exh. B. Accordingly, Movant satisfies the first requirement to serve as Lead
 4 Plaintiff for the class.

5 **2. Movant Has the Largest Financial Interest in the Relief Sought by the**
Class

6 The PSLRA requires a court to adopt the rebuttable presumption that “the most adequate
 7 plaintiff...is the person *or group of persons* that...has the largest financial interest in the relief
 8 sought by the class.” 15 U.S.C. §78u-4(a)(3)(B)(iii) (emphasis added); *In re Gemstar-TV Guide*
 9 *Int'l. Sec. Litig.*, 209 F.R.D. 447, 450 (C.D. Cal. 2002). At the time of this filing, Movant believes
 10 that he has the largest financial interest among Class members who filed timely applications for
 11 appointment as lead plaintiff and accordingly are presumed to be the “most adequate plaintiff.”

12 As a result of the revelations of the fraud as described above, Movant suffered a financial
 13 loss of \$3,692. *See* Portnoy Dec., Exh. C. To the best of his knowledge, Movant is not aware of
 14 any other adequate class member claiming larger financial losses that has filed a motion for
 15 appointment as lead plaintiff. Movant, thus, satisfies the second PSLRA requirement – the largest
 16 financial interest – to be appointed as lead plaintiff for the Class. *See Varghese v. China*
 17 *Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 396 (S.D.N.Y. 2008).

18 **3. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of**
Civil Procedure

20 Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to
 21 possessing the largest financial interest in the outcome of the litigation, the lead plaintiff must
 22 “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *See In re*
 23 *Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001). Rule 23(a) generally provides that a class
 24 action may proceed if the following four requirements are satisfied:

25 (1) the class is so numerous that joinder of all members is impracticable, (2) there
 26 are questions of law or fact common to the class, (3) the claims or defenses of the
 27 representative parties are typical of the claims or defenses of the class, and (4) the
 28 representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a).

1 In making its determination that putative lead plaintiffs satisfy the requirements of Rule
 2 23, the Court need not raise its inquiry to the level required in ruling on a motion for class
 3 certification; instead, a *prima facie* showing that the movant satisfies the requirements of Rule 23
 4 is sufficient. *Osher v. Guess? Inc.*, No. 01-cv-00871 LGB (RNBx), 2001 WL 861694, at *3 (C.D.
 5 Cal. Apr. 26, 2001). At the lead plaintiff stage, “[t]he typicality and adequacy requirements of
 6 Rule 23 are the main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are
 7 deferred until the lead plaintiff moves for class certification.” *Richardson v. TVIA*, No. C 06
 8 06304 RMW, 2007 WL 1129344, at *4 (N.D. Cal. Apr. 16, 2007) (citing *Cavanaugh*, 306 F.3d at
 9 730); *In re Cendant*, 264 F.3d at 263 (“The initial inquiry...should be confined to determining
 10 whether the movant has made a *prima facie* showing of typicality and adequacy”).

11 **a) Movant’s Claims are Typical**

12 Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that, “the claims...of the
 13 representative parties” be “typical of the claims...of the class.” A proposed lead plaintiff’s claims
 14 are typical of the class when the proposed lead plaintiff’s claims and injuries arise from the same
 15 events or course of conduct that gives rise to other class members’ claims and plaintiff’s claims
 16 are based on the same legal theory. *See Osher*, 2001 WL 861694, at *4. Under Rule 23 a lead
 17 plaintiff’s, “claims are typical ‘if he is reasonably coextensive with those of the absent class
 18 members; they need not be substantially identical.’” *Id.* (quoting *Hanlon v. Chrysler Corp.*, 150
 19 F.3d 1011, 1019 (9th Cir. 1998)).

20 Here, Movant’s claims are typical of the claims asserted by the proposed Class. Like all
 21 members of the Class, Movant purchased Zuora securities during the Class Period and suffered
 22 losses as a result of his transactions. Like all members of the Class, Movant alleges that
 23 defendants violated federal securities laws by disseminating materially misleading statements
 24 concerning Zuora’s operations and financial prospects. Movant’s losses, like the losses suffered
 25 by all other members of the Class, arise from the artificial inflation of Zuora securities caused by
 26 defendants’ alleged misrepresentations and omissions. Accordingly, Movant’s interests and
 27 claims are typical of the interests and claims of the Class.

28

b) Movant Is An Adequate Representatives

The Rule 23(a)(4) adequacy requirement is satisfied where it is established that a representative party “will fairly and adequately protect the interests of the class.” Accordingly,

The Ninth Circuit has held that representation is “adequate” when counsel for the class is qualified and competent, the representative’s interests are not antagonistic to the interests of absent class members, and it is unlikely that the action is collusive.

Takeda v. Turbodyne Techs., Inc., 67 F. Supp. 2d 1129, 1137 (C.D. Cal. 1999) (citing *In re Northern Dist. of Cal., Dalkon Shield IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982)).

The class representative must also have “sufficient interest in the outcome of the case to ensure vigorous advocacy.” *Yanek v. Staar Surgical Co.*, No. 04-cv- 8007 SJO(CWx), 2004 WL 5574358, at *6 (C.D. Cal. Dec. 15, 2004) (citing *Riordan v. Smith Barney*, 113 F.R.D. 60, 64 (N.D. Ill. 1986).

Here, Movant easily satisfies the adequacy requirements. Movant’s financial interest demonstrates that he has a sufficient incentive to ensure vigorous advocacy, and “no evidence exists to suggest that [Movant is] antagonistic to other members of the class or their attorneys, thereby meeting the adequacy of representation requirement.” *Yousefi v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1071 (C.D. Cal. 1999) (citation omitted). Moreover, Movant has retained competent and experienced counsel with the resources and expertise to efficiently and effectively prosecute this action. *See* Portnoy Dec., Exh. D (the firm’s résumé). In addition, Movant is not aware of any conflict between his claims and those asserted on behalf of the Class.

There are no facts that indicated any conflicts of interests between Movant and the other class members, and therefore Movant satisfies the typicality and adequacy requirements of Rule 23.

B. The Court Should Approve Lead Plaintiff's Choice of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only to approval of the Court. *See* 15 U.S.C. §78u-4(a)(3)(B)(v); *Yanek*, 2004 WL 5574358, at *7. The Court should not disturb the lead plaintiff's choice of counsel unless it is "necessary to protect the interests of the class." *Osher*, 2001 WL 861694, at *4 (quoting 15 U.S.C. §78u-

1 4(a)(3)(B)(iii)(II)(aa)). Here, Movant has selected Glancy Prongay & Murray LLP as lead counsel
2 for the class. As reflected by the firm's résumé, attached to the Portnoy Dec. as Exh. D, the Court
3 may be assured that, by granting Movant's motion, the Class will receive the highest caliber of
4 legal representation. Accordingly, the Court should approve Movant's selection of counsel.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Movant respectfully asks the Court to grant his motion and enter
7 an Order: (i) appointing Movant as Lead Plaintiff; (ii) approving Movant's selection of Glancy
8 Prongay & Murray LLP as Lead Counsel; and (iii) granting such other and further relief as the
9 Court may deem just and proper.

10 DATED: August 13, 2019

Respectfully submitted,

11 **GLANCY PRONGAY & MURRAY LLP**

12
13 By: /s/ Lesley F. Portnoy
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Attorneys for Movant Derek Selanders

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

3 I am not a party to the above case, and am over eighteen years old. On August 13, 2019, I
4 served true and correct copies of the foregoing document, by posting the document electronically
5 to the ECF website of the United States District Court for the Northern District of California, for
6 receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 13, 2019, at Los Angeles, California.

/s/ Lesley F. Portnoy
Lesley F. Portnoy